



DEPARTMENT OF DEFENSE
2200 DEFENSE PENTAGON
WASHINGTON, DC 20301-2200



NATIONAL MILITARY INFORMATION DISCLOSURE
POLICY COMMITTEE

OCT 30 2000

In reply refer to:
I-00/012863-IS

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF THE ARMY
(INTERNATIONAL AFFAIRS)
DEPUTY CHIEF OF STAFF FOR INTELLIGENCE
DEPARTMENT OF THE ARMY
ASSISTANT SECRETARY OF THE NAVY
RESEARCH, DEVELOPMENT AND ACQUISITION
DEPUTY UNDER SECRETARY OF THE AIR FORCE
(INTERNATIONAL AFFAIRS)
VICE CHAIRMAN, JOINT STAFF
DIRECTORS OF DEFENSE AGENCIES

SUBJECT: National Disclosure Policy Functions

The downsizing of Department of Defense resources has resulted in some activities being performed by consultants and support contractors under commercial contracts. There have been several inquiries to this office concerning the outsourcing of activities related to the National Disclosure Policy process.

As you are well aware, certain activities related to the operation of the government are inherently governmental responsibilities. Accordingly, consultants or contractors may not perform those activities. The process that results in decisions on whether or not U.S. classified information may be shared with foreign governments or international organizations is an activity that is inherently a governmental responsibility. There are several reasons for this.

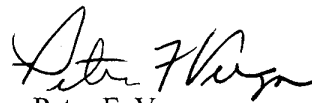
First, disclosure decisions are based on an evaluation of criteria specified in the National Disclosure Policy. One of these criteria is that the disclosure is consistent with United States foreign and national security policies towards the proposed recipient nation or international organization. Foreign policy and national security decisions are inherently a governmental responsibility.

Second, a disclosure decision requires an evaluation of the recipient nation's or organization's capability and intent to protect U.S. classified information. Both determinations are inherently governmental responsibilities. In fact, other governments have been assured that U.S. evaluations of their security programs will be handled in confidence. In some cases, security arrangements must be negotiated with the potential recipient nation; the negotiation of international agreements with other countries is also inherently a governmental responsibility.

Third, a disclosure decision can also constitute an exemption to the International Traffic in Arms Regulation and stand in the place of a U.S. export license. Export decisions are also inherently a governmental responsibility.

Therefore, all decisions on the disclosure of U.S. classified information to foreign governments and international organizations will be made in writing by a Department of Defense employee designated for this purpose pursuant to DoD Directive 5230.11.

While it would, in theory, be possible to employ contractor support for those in an agency carrying out disclosure functions, the Office of Federal Procurement Policy has pointed out that contractor support may approach being in the category of an inherently governmental function because of the way in which a contractor performs the contract or the manner in which the Government administers contractor performance. Accordingly, before any contractor support is employed for those carrying out National Disclosure Policy functions, the concurrence of the NDPC Secretariat should be obtained that this support does not impinge on the disclosure decision-making.



Peter F. Verga
Chairman